

Wednesday, 18 December 1946

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INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Chambers of the Tribunal  
War Ministry Building  
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On

Applications as follows:

Paper No. 604 - Application of the Prosecution for Medical Examination and Report concerning the accused OKAWA, Shumei.

Paper No. 608 - Application of the accused SHIRATORI, Toshio for the production of documents under Article 9(e) of the Charter.

Paper No. 613 - Application of the Prosecution to amend Order Nos. 254, 296 and 435 of the Tribunal concerning the production of certain witnesses for the accused FATA and UMEZU and others similarly situated.

Before:

HON. SIR WILLIAM WEBB,  
President of the Tribunal and  
Member from the Commonwealth  
of Australia.

Reported by:

Julian Wolf  
Official Court Reporter  
IMTFE

Appearances:

For the Prosecution Section:

MR. SOLIS HORWITZ  
MR. FRANK S. TAVENNER, Jr.  
MAJOR GENERAL VASILIEV

For the Defense Section:

MR. OWEN CUNNINGHAM, Counsel for  
the Accused OSHIMA, Hiroshi  
MR. MICHAEL LEVIN, Counsel for the  
Accused SUZUKI, Teiichi  
MR. BEN BRUCE BLAKENEY, Counsel for  
the Accused UMEZI, Yoshijiro  
MR. GEORGE C. WILLIAMS, Counsel for  
the Accused HOSFINO, Naoki  
MR. CHARLES B. CAUDIE, Counsel for  
the Accused SPIRATORI, Toshio  
MR. ALFRED W. BROOKS, Counsel for  
the Accused KOISO, Kuniaki, and  
OKAWA, Shumie  
MR. G.F. BLEWETT, Counsel for the  
Accused TOJO, Hideki

For the Office of the General Secretary,  
INTFE:

MR. CHARLES A. MANTZ, Clerk of the Court

The proceeding was begun at 0900.

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THE PRESIDENT: Paper 608 is a request for the production of documents by the accused SHIRATORI, the document being the "Berlin-Rome-Tokyo," November 1940 edition. It is a magazine published by the German Foreign Office. SHIRATORI contributed to it.

Mr. Caudle appears for the applicant?

MR. CAUDLE: Yes, your Honor.

THE PRESIDENT: And you, Mr. Tavenner, for the prosecution?

MR. TAVENNER: Mr. Forwitz and I.

MR. CAUDLE: We made every effort to obtain that and have not been able so to do.

THE PRESIDENT: Well, it is ordered as prayed.

Paper 604 is an application by the prosecution for the medical examination of the accused OKA" A. Do you appear, Mr. Tavenner?

MR. TAVENNER: Yes, sir.

THE PRESIDENT: Mr. Brooks for the accused.

Is there any opposition?

MR. BROOKS: No. This doctor, UCHIMURA,

is the one he is under the care of now out there, and he will be satisfactory to the defense for the psychiatrist to represent them at the examination.

THE PRESIDENT: The application asks that he be examined by two psychiatrists, one selected by the prosecution and one by the accused.

MR. BROOKS: Yes. I talked to Mr. OHARA and he said the doctor in charge of the hospital, UCHIMURA, he will be satisfactory.

MR. TAVENNER: Since the preparation of the application I have found that it may be advisable to transfer the accused to an American government hospital during the time he is being examined by an American psychiatrist, and for that reason it may be well to have the order include authority to the Marshal to transfer him there.

THE PRESIDENT: Will it be the Marshal or the Supreme Commander?

MR. TAVENNER: The Supreme Commander.

THE PRESIDENT: I will include in the order a direction that in that event, that is, in the event of the prosecution's psychiatrist desiring to examine him in an American hospital that the transfer be effected on such terms as the Supreme Commander directs.



MR. BROOKS: It may be added that any course of treatment that he is undergoing also be continued with the Japanese doctor while he is there. I don't imagine he will be there very long.

THE PRESIDENT: Suppose he is proved fit to stand his trial, and then a nice question arises as to whether it is too late to try him before the present Court on the present charges. That can be decided by my colleagues, but I won't let this pass without making this observation.

MR. BROOKS: I have an affidavit to file in his case, and I will file it when this other examination is filed. It goes to his medical history, if the Court please. I will save that and file it after we hear from our doctors.

THE PRESIDENT: Paper 613 is an application by the prosecution for amendment of the Tribunal's orders numbered 254, 296 and 435, concerning the production of witnesses, namely: HATA, Hikosaburo, IIDA, Shojiro, MATSUMURA, Tomokatsu, KASHIMOTO, Toranosuke, YANADA, Otozo, HASHIOKA, Yasunao, IURUMI, Tadaijuki, TAKEBE, Rokuzo.

These orders of the Tribunal were made as regards the first three in July last, and as

regards the others in September.

(Whereupon, MR. BLEWETT entered the conference room.)

THE PRESIDENT (Continuing): The prosecution pointed out in the application that the orders were made prior to the general decision of the Tribunal concerning the production of witnesses and the system of preliminary examination to determine the value of their testimony or proposed testimony. I certainly did make that general order on behalf of the Tribunal and if these matters had come before me after the change I would have directed what the prosecution now desires. All these witnesses, I understand, are still in the same custody as they were when the orders were made. The application states that winter conditions and remote distance make communication with the Soviet Union difficult and that it involves transportation difficulties, indefinite period of time and considerable expense, to bring any of these witnesses.

"What has the defense to say? What has the defense counsel representing the accused to say?"

Major?

MR. BLAKENEY: Well, sir, I should like to point out that notwithstanding the dates on which these subpoenas now sought to be recorded were issued run from the first of July to the 16th of September, at which time, of course, winter conditions did not prevail in the Northern Hemisphere. There has been no return of any nature on these subpoenas. We have been given no indication of whether the subpoenas would be served, have been served or could not be served. I think this alone speaks volumes for the possibility of obtaining any relief through interrogatories for the witnesses.

I should like to point out also that witnesses similarly situated in other custody, who were subpoenaed as of approximately the same dates, or even in some instances later dates, have been sought for and have been reported on and are now in process of repatriation from British, Dutch and other custody.

As far as concerns the argument given in this motion that the witness FURUMI, for example, has been requested by other accused, I might point out that Mr. Williams represents one of the

accused who have applied also for the witness FURUMI, and he can state his own viewpoint concerning that.

As a matter of fact, I am unable to see why the fact that other accused would like to interview the witnesses is the reason for calling these subpoenas for witnesses which we in good faith require.

It is quite true, of course, that your Honor has changed the system of production of witnesses, but I don't believe that that should militate against the successful defense of an accused who was prompt enough to secure orders under the applicable procedures at that time. We had no inkling of and no idea that the system would be changed and in good faith we secured the subpoenas, and I can't see any reason why that shouldn't be executed. There is no reason given in this document rather than inconvenience and expense, both of which the Tribunal has repeatedly said should not be considerations in a trial of this nature.

Mr. Williams might explain his position in connection with FURUMI.

MR. WILLIAMS: If it please the Tribunal,



the order for FURUMI provides for interrogatories that every facility be given towards submitting those. Naturally I should like very much to have FURUMI appear in person to be interrogated and used as a witness. On the same grounds as Major Blakeney, our defensive grounds may be different, but his position in the government of Manchuria was of such importance that I think it quite plain that as far as I am concerned certainly that he ought to be here, and I, of course, would like to see him appear.

MR. BLAKENEY; I should like to make one further remark if I may: that of the eight witnesses listed in this application, one, of course, has already been here and testified. That is the witness MATSUMURA, and I don't think any of us is very much concerned about him any further. I have his affidavit now. Of the remaining seven at least four were clearly connected by prosecution evidence with the case, and their importance could be made quite obvious by quotation from the record, and I think I can submit that it is also quite obvious from the record that those four or five witnesses might be of vital importance to the defense generally, not only to the one that has subpoenaed them.

THE PRESIDENT: I don't know why the orders I have already made were not given effect. It may be the fault of SCAP, it may be the fault of the Russians, or it may be the fault of somebody else. On the other hand, it may not be the fault of anybody. I am not in a position to know. I must assume that all of the people to whom my order is directed will carry it out, but the fact remains that these men who have been subpoenaed are not on their way. They are just where they were when the subpoena was issued. In the meantime, I have changed the method of approach to those people about their evidence. I have substituted in the place of a subpoena an interrogation in the first instance, and I suppose there is no reason why I should not now deal with this matter as though it came before me for the first time. It would be a very technical stand on my part to say, I have issued a subpoena and therefore I will see it through.

I will take that stand if the witnesses were in the course of being removed under subpoena, but the position is exactly the same in their case as it is in the case of any other witness or proposed witness in respect of whom I

have given an order for interrogation in the first place. So I will countermand the subpoena and -- I will postpone the service of the subpoena or the execution of the subpoena and substitute and direct that in the meantime, pending the service of the subpoena which is to be the subject of further direction, the proposed witnesses be interrogated and that every facility be given for their interrogation by the defense. That is to say, I put your witnesses, or proposed witnesses, Major Blakeney, in the same position as other witnesses whom the defense are seeking to have brought here.

Is there anything further?

MR. CUNNINGHAM: Yes, sir, the matter of General Ott. I took it up with you Monday.

THE PRESIDENT: I couldn't trust my memory, so I looked up the record to see whether General Ott ever made any affidavit, but he has made no affidavit of any kind. His name has appeared frequently in documents; he had quite a deal, sent and received several documents. Had he made an affidavit it might be different. It would be an odd thing to call for his cross-examination on documents only. The defense are, of course, open to call him as a witness and I

will deal with any application that may be made to me for a subpoena for him.

MR. CUNNINGHAM: We made application for a subpoena for him, Mr. Caudle and I, and you can appreciate the situation for us to take several weeks to go to Peking to interrogate him when it would be a simple matter for us to bring him here as a witness, and we renew our request that -- our application for a subpoena for General Ott as a witness for the defense.

THE PRESIDENT: I think his evidence is of sufficient importance to direct that he be brought here, so I will direct the subpoena to issue.

MR. CUNNINGHAM: That is fine. Thank you.

THE PRESIDENT: I thought you wanted him brought by the prosecution, for cross-examination.

MR. CUNNINGHAM: I would rather have him for cross-examination, and I take the view that even though the witness only testifies from documents which he has issued, that it ought to be sufficient grounds to cross-examine him on those documents, their authenticity, their source, the information that he based them on, and all that. But I see the Court takes a different viewpoint.



But there were no live witnesses in the German-Japanese phase of the case. They made out their whole case by documents and affidavits. Don't you see?

THE PRESIDENT: Have you made any attempt to interrogate him? It may be that you will bring him here only to find that he sent and received that document. So far the whole of his testimony is confined to documents which are sent or received. The whole of the evidence concerning him is confined to documents which he either sent or received, and it may be by bringing him here that he may say, "I sent that document, or received that document," and nothing would be gained. For what particular reason do you want him, Mr. Cunningham?

MR. CUNNINGHAM: I have Ambassador Stammer here and have interrogated him and questioned him on the authenticity of these documents. I have information that Ambassador Stammer was sent here specifically because General Ott was sending information that was not authentic, and he was replaced for that reason, and his evidence has been given weight, apparently, in this case.

THE PRESIDENT: Did Stammer testify that Ott sent misleading information to Germany?

MR. CUNNINGHAM: First I want to find out the source of General Ott's information before I attack it. Don't you see?

THE PRESIDENT: You see, you get that by interrogation really.

MR. CUNNINGHAM: I can't interrogate him in China. It takes three weeks or a month to do so.

THE PRESIDENT: I wouldn't expect him to admit on being interrogated that he sent wrong information. I think you have a reason to think that he did, from the testimony of Stammer, or somebody that you interrogated already -- that you have a good reason that he be brought here. I wouldn't expect you to interrogate him with a view to finding out whether he sent misleading information to Germany.

MR. CAUDLE: If it please your Honor, we have information that he was sort of on outs with his government and that he was sending this information in an effort to prove that he was a Prussian and not a Nazi, and I understand that he came very nearly being assassinated back when they had their own purge in 1934 and 1935.

THE PRESIDENT: Have you information that he was misrepresenting the Japanese attitude to the Germans?

MR. CAUDLE: At least our clients.

THE PRESIDENT: Did you get that information from Stammer?

MR. CUNNINGHAM: I got mine out of the Foreign Office.

THE PRESIDENT: From whom?

MR. CAUDLE: The Japanese Foreign Office.

THE PRESIDENT: Which man?

MR. CAUDLE: Mr. OTA.

THE PRESIDENT: Will you give evidence?

MR. CAUDLE: He says that it was the rumor going round. I won't make a general statement.

THE PRESIDENT: What does Stammer say?

MR. CUNNINGHAM: Stammer says he was sent here by Ribbentrop because the stories between Ott and the ambassador to Germany were so inconsistent that he wanted to get a true story from Tokyo, and Ribbentrop told me the same thing.

THE PRESIDENT: That would suggest that Ott was misleading the German government.

MR. CUNNINGHAM: Ott was misleading his

own government.

THE PRESIDENT: I will give you the order  
for the subpoena.

(Whereupon, at 0915, the proceed-  
ing was concluded.)

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